

APS-357

September 28, 2006

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **06-2498**

GERRON LINDSEY

VS.

STATE OF DELAWARE, ET AL.

(D. DEL. CIV. NO. 05-CV-00164)

Present: SLOVITER, McKEE and FISHER, CIRCUIT JUDGES

Submitted is Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);

in the above-captioned case.

Respectfully,

Clerk

MMW/RL/cmd

ORDER

The foregoing application for a certificate of appealability is denied. For essentially the reasons explained by the District Court, Lindsey has failed to make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Lindsey was not entitled to equitable tolling for the time his motions for transcripts were pending in the state courts, see Donovan v. Maine, 276 F.3d 87 (1st Cir. 2002); Lloyd v. Van Natta, 296 F.3d 630 (7th Cir. 2002); Gassler v. Bruton, 255 F.3d 492 (8th Cir. 2001), or for an attorney's failure to file a second PCR motion. See Schlueter v. Varner, 384 F.3d 69, 76-77 (3d Cir. 2004); Brown v. Shannon, 322 F.3d 768, 774 (3d Cir. 2003). Moreover, Lindsey waited more than eight months after his second PCR motion ceased to be pending to file his § 2254 petition. See Satterfield v. Johnson, 434 F.3d 185, 196 (3d Cir. 2006) ("Following dismissal of his PCRA petition, he waited more than eight months to file his habeas petition in federal court. Such a delay demonstrates that Satterfield did not diligently pursue available routes to collateral relief.").

By the Court,

/s/ D. Michael Fisher

Circuit Judge

Dated: October 12, 2006

CMD/cc: Michael V. Gilberti, Jr., Esq.

Loren C. Meyers, Esq.